

rate.<sup>175</sup> Again, we anticipate that the MARS rate will increase when it is recalculated in future years. In any event, because for the present Fund year we are increasing the MARS rate for STS by including additional sums for outreach, the resulting 2007-2008 rate falls within the range of rates proposed in the NECA filing.

61. For STS, in addition to the MARS rate, we will also provide an additional amount, on a per-minute basis, for the STS providers to conduct outreach. Consumers have expressed concern that present outreach efforts have not been sufficient to reach the potential pool of STS users.<sup>176</sup> STS consumers assert, for example, that only a few thousand persons seem to be aware of, and use, STS, out of a much larger pool of potential users.<sup>177</sup> Also, NECA monthly reports reflect that there has been virtually no growth in the use of STS over past year and a half.<sup>178</sup> We agree that potential STS users are not being made aware of this important service. For this reason, for the 2007-2008 Fund year will add an additional amount of \$1.131 per minute to the STS compensation rate calculated under the MARS plan.<sup>179</sup> This amount represents the difference between the STS MARS rate and the STS rate based on 2006 actual costs, adjusted for inflation (\$2.723), as reflected in the Fund administrator's May 2007 filing.<sup>180</sup> We require that this additional sum be used by the providers specifically for outreach. We also require that STS providers file a report annually with NECA and the Commission on their specific outreach efforts directly attributable to the additional support for STS outreach. We will revisit this issue in future Fund years to determine if, again, additional amounts may be necessary for STS outreach.

## 2. Interstate CTS and Interstate and Intrastate IP CTS

62. The 2007-2008 compensation rate for interstate CTS and IP CTS, as calculated under the MARS plan, is \$1.629 per minute. This rate shall apply beginning on the first day of the month following the effective date of this *Order*.

63. This rate is based on calendar 2006 intrastate captioned telephone service data from the 39 states that provided this service in 2006. The rate from each state, and whether it is based on conversation minutes or session minutes, is set forth in Appendix F (rates are listed from lowest to highest).

64. As set forth above, to determine the MARS rate, total dollars (calculated by multiplying each state's per-minute captioned telephone service rate by either session or conversation minutes, whichever the rate is based on) are divided by the total number of intrastate captioned telephone service conversation minutes. That calculation is: \$15,867,338 divided by 9,739,138, which equals \$1.629.

<sup>175</sup> See, e.g., 2004 Bureau TRS Order, 19 FCC Rcd at 12233, para. 22; 2005 TRS Rate Order, 20 FCC Rcd at 12239-40, para. 6.

<sup>176</sup> See Bob Segalman *Ex Parte* (July 5, 2007); Bob Segalman *Ex Parte* (July 17, 2007); Bob Segalman *Ex Parte* (July 30, 2007).

<sup>177</sup> See *supra* note 176. In this regard, we note that monthly minutes of STS use recently average approximately 15,000 minutes. See [www.neca.org](http://www.neca.org) (Resources, then TRS).

<sup>178</sup> See [www.neca.org](http://www.neca.org) (Resources, then TRS) (for example, in January 2006 monthly minutes of STS use totaled 14,349; in December 2006 there were 16,430 minutes of use; and in June 2007 there were 16,000 minutes of use).

<sup>179</sup> Because interstate STS minutes average approximately 15,000 minutes per month, the additional sum of \$1.131 per minutes will result in an additional cost to the Fund of approximately \$100,000 for the 2007-2008 Fund year (based on the effective date of the new rates).

<sup>180</sup> See 2007 NECA Filing at Ex. 1-3b.

Again, we do not include an allowance for working capital because that factor is built into the state rates.<sup>181</sup>

65. We note that previously interstate captioned telephone service was compensated at the same rate as interstate traditional TRS, and that the IP CTS rate was the same as the IP Relay rate.<sup>182</sup> The MARS rate of \$1.629 represents an increase of \$0.338 (approximately 26 percent) from the 2006-2007 traditional TRS rate (\$1.291) applied to captioned telephone service, and an increase of \$0.336 (approximately 26 percent) from the 2006-2007 IP Relay rate (\$1.293) applied to IP CTS.

### 3. IP Relay

66. We conclude that the initial rate for intrastate and interstate IP Relay under the price caps methodology described above shall be the present compensation rate of \$1.293 per minute.<sup>183</sup> This will be the base compensation rate that applies for the 2007-2008 through the 2009-2010 Fund years. As noted above, we will adjust this rate downward in future years by 0.5 percent to reflect efficiencies. NECA presented IP Relay rates ranging between \$1.16 and \$1.28, the latter reflecting both 2006 actual costs adjusted for inflation and a rate based on providers' projected minutes of use and costs, unadjusted.<sup>184</sup> We believe that the current rate reasonably compensates providers based on the cost data and the rates proposed by NECA. Further, because, for the first time, we are adopting a rate for a three-year period, we believe that this approach will add additional stability and predictability to the IP Relay rates. In sum, we will continue the current rate of \$1.293 for the remainder of the 2007-2008 Fund year, and use it as the base rate for the price caps methodology over the first three year period.

### 4. VRS

67. As noted above, we adopt a tiered rate methodology for the compensation rates for interstate and intrastate VRS. After reviewing the comments in the record, as well as cost and market data received from NECA, we agree with the VRS Tiered Proposal. Therefore, for the 2007-2008 Fund year, effective on the first day of the month following the effective date of this *Order*, we adopt three tiers and respective rates, as follows: (1) for the first 50,000 monthly minutes: \$6.77; (2) for monthly minutes between 50,001 and 500,000<sup>185</sup>: \$6.50; and (3) for monthly minutes above 500,000: \$6.30. Under this approach, all providers are compensated at the highest rate for their first 50,000 minutes, at the middle rate for their minutes between 50,001 and 1,000,000, and at the lower rate for all minutes above 1,000,000. In this way, all providers are compensated at the same rate for the same number of minutes.<sup>186</sup> These tiers and rates shall apply through the 2009-2010 Fund year, as addressed below.

<sup>181</sup> See *supra* note 87.

<sup>182</sup> See *supra* note 17.

<sup>183</sup> We note that this rate includes the 1.4 percent rate of return for an allowance for working capital, and therefore we do not further adjust this rate in this regard. In addition, although NECA has suggested increasing this rate to 1.6 percent, we need not address this issue because, we conclude, the rates adopted in this *Order* include this allowance. See 2007 Bureau TRS Rate Order, 22 FCC Rcd at 11708, para. 5 n.12.

<sup>184</sup> See 2007 NECA Filing at Ex. 1-2b.

<sup>185</sup> We note that, subsequent to the filing of the VRS Tiered Proposal, other providers suggested modifications to this proposal, including having the second tier extend to 1,000,000 minutes. See George Lyon, Jr. on behalf of HQVRS (July 11, 2007) (suggesting that the second tier run from 50,001 to 1,000,000 (rather than to 500,000), and noting that other providers concur with the proposed modification). Given that available market data shows that more established providers have monthly minutes in the low hundreds of thousands, a middle tier that is capped at 500,000 minutes is reasonable.

<sup>186</sup> This approach is supported by some of the VRS providers. See Michael B. Fingerhut *Ex Parte* (June 27, 2007).

68. We base these tiers on market data reflecting the number of monthly minutes submitted to NECA by the various providers. The data reflects that the newer providers generally provide less than 50,000 minutes of month; that other, more established providers (with the exception of the dominant provider) provide monthly minutes ranging in the low hundreds of thousands; and that the dominant provider provides minutes ranging in the millions. We believe that these tiers are appropriate to ensure that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more established providers will not be overcompensated. The number and size of the tiers will be reevaluated every three years.

69. For the 2007-2008 Fund year, we base the rates for each tier on the following factors. First, for newer providers offering a relatively small number of minutes, we believe that it is appropriate to base the rate on the providers' projected costs and minutes of use. As NECA's filing reflects, the rate based on the providers' projected demand and cost data, without any disallowances, is \$6.77.<sup>187</sup> We believe that this rate fairly reflects the actual reasonable costs of the newer or smaller providers offering VRS in compliance with all non-waived mandatory minimum standards.

70. Second, for the middle tier, which would generally apply to established but non-dominant providers, we believe it is appropriate to base the rate on the \$6.77 rate noted above, less marketing (as reflected in the 2007 NECA Filing<sup>188</sup>) and certain undisputed cost disallowances.<sup>189</sup> The resulting rate is \$6.50.

71. Finally, for providers with a large number of minutes have generally been providing service for a number of years and, as noted above, have economies of scale that result in lower per-minute costs,<sup>190</sup> we adopt a rate of \$6.30. We believe this rate will encourage providers with large numbers of minutes to become more efficient.

72. These VRS tiers and rates will apply for a three year period (the 2007-2008 through 2009-2010 Fund years). At the end of each fund year, the compensation rates will be adjusted downward to reflect a consumer productivity dividend of 0.5 percent (0.005).<sup>191</sup> Annually, VRS providers will be allowed to request exogenous treatment for costs they incurred during the three-year period that are the result of new regulations or otherwise beyond their control. At the end of the three-year period, we will reassess what the tiers and rates shall be for the ensuing three-year period.

### C. Specific Guidelines on Allowable Costs

73. In the 2006 TRS Cost Recovery FNPRM, the Commission sought comment on cost categories including: (1) overhead costs; (2) start-up expenses; and (3) executive compensation.<sup>192</sup> We address these cost categories, and others, below.

74. *Overhead.* The Commission sought comment on whether any general overhead costs – i.e., “those indirect costs that are neither cost-causative nor definable” – should be compensable by the Fund.<sup>193</sup> Specifically, the Commission sought comment on whether providers' reasonable costs should be

<sup>187</sup> See 2007 NECA Filing at Ex. 1-4b.

<sup>188</sup> *Id.*

<sup>189</sup> See Michael B. Fingerhut *Ex Parte* (June 27, 2007).

<sup>190</sup> See *supra* paras. 53-54.

<sup>191</sup> Because we are adopting tiered rates based on minutes of use provided, we no longer believe it is necessary to treat an allowance for working capital as a cost that must be compensated separately. We believe compensation for such costs is subsumed in the rates we have adopted herein.

<sup>192</sup> 2006 TRS Cost Recovery FNPRM, 21 FCC Rcd at 8393-97, paras. 32-42.

<sup>193</sup> 2006 TRS Cost Recovery FNPRM, 21 FCC Rcd at 8395-96, paras. 38-39.

limited to their marginal costs of providing TRS, which would not include an allocation of general overhead costs. The Commission noted that in the 2004 TRS Report & Order, the Commission stated that providers may recover reasonable overhead costs "directly attributable to the provision of TRS."<sup>194</sup>

75. Although commenters assert that there must be adequate funding of overhead costs,<sup>195</sup> the issue is whether there are limits on the types of overhead costs that may be included as reasonable costs attributable to the provision of TRS. We conclude that indirect overhead costs are not reasonable costs of providing TRS. In other words, appropriate overhead costs are those costs that are directly related to, and directly support, the provision of relay service. Therefore, indirect overhead costs may not be allocated to TRS by an entity that provides services other than TRS based on the percentage of the entity's revenues that are derived from the provision of TRS. All costs submitted to the Fund administrator must directly support the provision of relay service. For example, executive salaries, or a portion thereof, may be attributed to the provision of TRS to the extent that it can be shown that a particular executive actually supported the provision of TRS.<sup>196</sup> Our conclusion is consistent with Congress placing the obligation to provide TRS on carriers that were already offering voice telephone service.<sup>197</sup>

76. *Start-up Expenses.* The Commission sought comment on whether it is appropriate and consistent with Section 225 to reimburse the "start-up" expenses of new entities seeking to offer VRS or the other forms of TRS.<sup>198</sup> The Commission asked, for example, whether the Fund should reimburse the legal and related organizational expenses of multiple new companies that desire to offer TRS, particularly when there are already numerous providers offering service. No comments were filed addressing this issue.

77. We recognize that the Commission has recently encouraged competition in the provision of VRS,<sup>199</sup> and that as a practical matter new competitors must bear start-up expenses to become viable VRS providers. Therefore, we conclude that start-up costs are compensable, but must be amortized. We will require these costs to be amortized in accordance with generally accepted accounting rules. In this way, these costs will not skew the rate in a particular year, but will be recoverable over time.

78. *Executive Compensation.* The Commission sought comment concerning the appropriate amount of TRS providers' executive compensation that may be included in the providers' cost data, and on whether "the number of executives for whom compensation is sought should be tied to, or limited by,

<sup>194</sup> *Id.*, 21 FCC Rcd at 8396, para. 38 (citing 2004 TRS Report & Order, 19 FCC Rcd at 12544, para. 182 & n.520).

<sup>195</sup> *E.g.*, Joint Consumers Comments at 3-7 (arguing that insufficient funding for overhead costs would adversely affect deaf people as well as hearing people who rely on relay services, and that all reasonable operational costs – directly and indirectly linked to the provision of TRS services – should be compensated).

<sup>196</sup> For example, if executives of a company that provides a variety of services in addition to TRS do not personally work on TRS issues, no part of their salaries can be included in the company's TRS cost submission. If such executives devote 25 percent of their time to TRS matters, then 25 percent of their salaries can be included in the TRS cost submission.

<sup>197</sup> See 47 U.S.C. § 225(c). This issue will not arise for entities that only offer relay services. In those circumstances, the issue is whether the particular costs are reasonable and necessary to the provision of relay service.

<sup>198</sup> 2006 TRS Cost Recovery FNPRM, 21 FCC Rcd at 8397, para. 41; see also 47 U.S.C. § 225(d)(3)(B) (providing for the recovery of "costs caused" by the provision of TRS).

<sup>199</sup> See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket 03-123, Report and Order and Order on Reconsideration, 20 FCC Rcd 20577 (Dec. 12, 2005) (2005 TRS Certification Order) (adopting Commission certification procedures for entities desiring to offer IP Relay and VRS and receive compensation from the Fund).

the overall size of certain providers.”<sup>200</sup> The Commission sought to clarify the scope and nature of such costs that should be considered “reasonable” costs compensable by the Fund, and whether they should be limited to some percentage of other costs or in some other way. Hands On asserts that this is a necessary rate element in providing relay, although the executive structure will vary depending on the size of the provider.<sup>201</sup> Joint Consumers similarly assert that reasonable executive compensation is necessary to providing TRS, and therefore should be reimbursable from the Fund.<sup>202</sup>

79. Reasonable executive compensation for persons who directly support the provision of TRS is compensable from the Fund. As noted above, these costs must be apportioned for persons who do not spend all of their time supporting the provision of relay.<sup>203</sup> As a general matter, we will consider bonuses, stock options, and other indirect compensation in an assessment of what is reasonable compensation.

80. *Other Costs.* Financial transaction costs or fees unrelated to the provision of relay service are not compensable as reasonable costs of providing service. Such costs include costs and fees relating to a change in ownership of the entity providing relay service, the sale of the entity, the spin off of part of the entity, or any other transaction directed at the ownership, control, or structure of the relay provider.

81. Further, Hands On asserts that the Fund should compensate “certified deaf interpreters” (CDI), *i.e.*, interpreters who are deaf and for whom ASL is their native language.<sup>204</sup> Although Hands On acknowledges that the rules require that VRS providers use qualified interpreters,<sup>205</sup> Hands On maintains that CDIs’ “possess a skill set that is not available to hearing interpreters,” and therefore they may be needed in certain circumstances to ensure that effective and accurate communication is taking place between the VRS user and the CA.<sup>206</sup> We need not address whether, as a general matter, CDI costs should be compensable from the Fund. Rather, we will apply the reasonableness standard to providers’ staffing and compensation of CAs.

82. Because some providers appear to continue the practice of giving video equipment to consumers and installing it at no cost to the consumer,<sup>207</sup> we also reiterate that costs attributable to relay hardware and software used by the consumer, including installation, maintenance costs, and testing are not compensable from the Fund.<sup>208</sup> As the Commission has explained, “compensable expenses must be

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<sup>200</sup> 2006 TRS Cost Recovery FNPRM, 21 FCC Rcd at 8397, para. 42 (also noting that the Commission expressed concern about this issue in the 2004 TRS Report & Order).

<sup>201</sup> Hands On Comments at 50-51.

<sup>202</sup> Joint Consumer Comments at 7. The Joint Consumers further suggest that the TRS Advisory Council, the Fund Administrator, and the Commission should look carefully at executive compensation and other general overhead costs to make sure that the level of such compensation is reasonable and that the allocation to TRS services is also fair and reasonable.

<sup>203</sup> See generally 2004 TRS Report & Order, 19 FCC Rcd at 12544, para. 182 n.520; see also *supra* para. 57.

<sup>204</sup> Hands On Comments at 58-62; see also CSD Reply Comments at 13-16 (arguing that the costs of Certified Deaf Interpreters (CDIs) should be compensable in order to facilitate communication of deaf consumers with limited ASL skills); Joint Consumers Comments at 3 (addressing the need for CDIs),

<sup>205</sup> Hands On Comments at 59 (citing 47 C.F.R. § 64.604(a)(iv)).

<sup>206</sup> *Id.* at 60-61.

<sup>207</sup> See VRS Interoperability Declaratory Ruling and FNPRM, 21 FCC Rcd at 5448, paras. 15-16 (noting practice of providers of distributing and installing VRS equipment at no cost to the consumer).

<sup>208</sup> See 2006 MO&O, 21 FCC Rcd at 8071, para. 17.

the providers' expenses in making the service available and not the customer's costs of receiving the equipment. Compensable expenses, therefore, do not include expenses for customer premises equipment – whether for the equipment itself, equipment distribution, or installation of the equipment or necessary software.”<sup>209</sup> We will closely scrutinize the providers' submitted costs to ensure that such costs are neither directly nor indirectly included in the costs submitted by the providers.

#### D. Management and Administration of the Fund

##### 1. The Interstate TRS Fund Advisory Council

83. In the *Third TRS Report & Order*, the Commission adopted the TRS cost recovery rules and appointed NECA as the interim Fund administrator.<sup>210</sup> At the same time, the Commission created an “advisory committee” to monitor TRS cost recovery issues.<sup>211</sup> The Commission stated that this committee would be a “safeguard” in view of comments noting that NECA was associated with one specific industry group – local exchange carriers (LECs).<sup>212</sup> Specifically, the Commission directed NECA to “establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers.”<sup>213</sup> The Commission further directed that each group select its own representative to the committee, and that the committee “meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters.”<sup>214</sup> The Commission concluded that with “these additional safeguards in place, NECA is uniquely placed to effectuate timely and efficient implementation of the TRS Fund.”<sup>215</sup> The Commission's creation of this advisory committee – the TRS Advisory Council – is reflected in the TRS regulations.<sup>216</sup>

84. In June 2004, the Commission sought comment on several issues concerning the Advisory Council, including whether the Council was still necessary.<sup>217</sup> The Commission also sought comment on ways in which the Council might play a more productive role in connection with the interstate TRS cost recovery scheme.<sup>218</sup> In addition, the Commission sought comment on whether the composition of the Advisory Council should be changed or expanded to include parties that represent the TRS Fund or any other relevant interests not currently represented on the Council.<sup>219</sup> In response to the

<sup>209</sup> *Id.* We note that the Fund administrator's cost data form explicitly states that the cost of equipment given to, sold to, or used by relay callers is not compensable from the Fund. See Relay Services Data Request Instructions at 4 (included in the 2006 NECA Filing).

<sup>210</sup> *Telecommunications Relay Services and the Americans with Disabilities Act of 1990*, Third Report and Order, CC Docket No. 90-571, 8 FCC Rcd 5300 (July 20, 1993) (*Third TRS Report & Order*).

<sup>211</sup> *Id.*, 8 FCC Rcd at 5301, para. 8.

<sup>212</sup> *Id.*, 8 FCC Rcd at 5300-01, para. 5.

<sup>213</sup> *Id.*, 8 FCC Rcd at 5301, para. 8.

<sup>214</sup> *Id.*

<sup>215</sup> *Id.*

<sup>216</sup> See 47 C.F.R. § 64.604(c)(5)(iii)(H). Consistent with the regulations, the Council has met twice a year to address matters concerning cost recovery and the Interstate TRS Fund.

<sup>217</sup> *2004 TRS Report and Order*, 19 FCC Rcd at 12570-71, paras. 251-54.

<sup>218</sup> *Id.*, 19 FCC Rcd at 12571, para. 254.

<sup>219</sup> *Id.*, 19 FCC Rcd at 12571, para. 253.

FNPRM, nine comments and three reply comments were filed addressing this issue.<sup>220</sup> Commenters generally support the role of the Advisory Council.<sup>221</sup>

85. We believe that the Advisory Council can continue to play an important role in the oversight of TRS. We recognize that, in the past, the Commission has directed the Council, along with the Fund administrator, to develop cost recovery guidelines for various forms of TRS.<sup>222</sup> The Council has also played a role in the TRS Fund administrator's annual proposal for compensation rates for the various forms of TRS.<sup>223</sup> In view of the adoption of the new MARS plan, we believe the Council can play a role in monitoring and reviewing the implementation of that methodology, and raising unforeseen issues that may arise. We also believe that, with the respect to VRS, the Council can play a role in identifying cost categories that may need to be more specifically defined to ensure that providers are compensated for their reasonable actual costs, and in the future address whether there is still a better cost recovery methodology for VRS. Finally, we believe the Council can address other matters as assigned by the Commission, including, for example, cost recovery issues related to the possible adoption of a numbering regime for VRS and implementation of a way in which VRS users can access emergency services.

## 2. Other Issues

86. As part of our oversight of the Fund, we anticipate additional and more comprehensive auditing of the providers. Sorenson suggests the implementation of better record-keeping practices, including automated electronic counting of minutes.<sup>224</sup> The TRS regulations expressly contemplate that the Commission and the Fund administrator may audit recipients of support from the Interstate TRS Fund,<sup>225</sup> and we intend to do so, including the review of underlying documentation supporting submitted cost and demand data, as well as minutes submitted for compensation. Only in this way can we ensure the integrity of Fund.

87. The 2006 TRS Cost Recovery FNPRM also sought comment on whether the providers' cost and demand data should be made public.<sup>226</sup> The Commission noted that some providers urge the Commission to provide greater transparency in the rate setting process.<sup>227</sup> In response to this FNPRM,

<sup>220</sup> Comments were filed by the California Public Utilities Commission (CPUC) (Oct. 18, 2004); CSD (Oct. 18, 2004); Hands On (Oct. 15, 2004); National Video Relay Service Coalition (VRS Coalition) (Oct. 18, 2004); Sprint (Oct. 18, 2004); Hamilton (Oct. 18, 2004); Interstate TRS Fund Advisory Council (Advisory Council) (Oct. 18, 2004); Verizon Telephone Companies (Verizon) (Oct. 18, 2004); Sorenson (Oct. 18, 2004). Reply comments were filed by CSD (Nov. 15, 2004), Hamilton (Nov. 16, 2004), and Hands On (Nov. 15, 2004).

<sup>221</sup> See, e.g., CSD Comments at 37-38; Hands On Comments at 41; VRS Coalition Comments at 17; Sprint Comments at 15, 18. In its comments to the 2006 TRS Cost Recovery FNPRM, Hamilton notes that the TRS Advisory Council is currently underutilized as an oversight mechanism. Hamilton Comments at 12.

<sup>222</sup> See, e.g., 2000 TRS Order, 15 FCC Rcd at 5155-56, paras. 32-33; Interstate TRS Fund Advisory Council, TRS Cost Recovery Recommendations, filed November 9, 2000; Interstate TRS Fund Advisory Council, IP Relay Cost Recovery Recommendations, filed October 9, 2002; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98-67, CG Docket No. 03-123, Order, 20 FCC Rcd 13195, at 13198, para. 9 (July 19, 2005) (proposing jurisdictional allocation methodology for inbound two-line captioned telephone calls).

<sup>223</sup> At the same time, we note that the Council did not file comments in response to the 2006 TRS Cost Recovery FNPRM, which, as this Order reflects, raised the fundamental and comprehensive cost recovery issues.

<sup>224</sup> See Sorenson Comments at 60.

<sup>225</sup> 47 C.F.R. § 64.604(c)(5)(iii)(H).

<sup>226</sup> 2006 TRS Cost Recovery NPRM, 21 FCC Rcd at 8397, paras. 43-44.

<sup>227</sup> Id. (citing comments of Hamilton and Hands On).



Verizon and Sorenson assert that making provider cost and demand data public would result in competitive harm.<sup>228</sup> Hands On disagrees, asserting that Verizon and Sorenson have not offered any examples on "how they would suffer harm from an open, transparent process where cost and demand projections are available for public review and comment."<sup>229</sup>

88. We agree that there should be more transparency to the rate setting process. We also realize, however, that the interest in transparency must be balanced against the providers' interest in the confidentiality of their cost and demand data, an interest reflected in our rules.<sup>230</sup> We believe that the use of MARS plan will add transparency for the determination of the traditional TRS, STS, captioned telephone service, and IP CTS rates. As noted above, we anticipate listing the state rates used in calculating the MARS rates (without identifying the states involved), and also setting forth the final calculation that divides total costs by total minutes to determine the rate.<sup>231</sup> Moreover, because there are no cost adjustments to provider specific data in the determination of these rates, transparency concerns cannot be significant. With respect to VRS, we believe that the adoption of tiered rates, as raised below in the *FNPRM*, will also largely eliminate these concerns. To the extent we adopt a different cost recovery methodology, however, we will continue to keep providers' submitted cost and demand data confidential, as provided in our rules, except when appropriate in the aggregate or in a way that does not disclose provider specific data.

#### IV. DECLARATORY RULING

89. In this Declaratory Ruling, we clarify that providers may not offer consumers financial or other incentives, directly or indirectly, to make TRS calls. We set forth in greater detail the kinds of incentives that are impermissible under our rules, and also address the improper use of customer call records or databases.

90. In January 2005, the Consumer & Governmental Affairs Bureau (CGB) released the 2005 *Financial Incentives Declaratory Ruling*, which addressed a VRS provider's consumer reward program that was based on call minutes.<sup>232</sup> The item concluded that "any program that involves the use of any type of financial incentives to encourage or reward a consumer for placing a TRS call" violates Section 225.<sup>233</sup> The item reasoned that "[t]he fact that any TRS reward or incentive program has the effect of enticing TRS consumers to make TRS calls that they would not otherwise make, which allows the provider to receive additional payments from the Fund, and results in 'payments' to consumers for using the service, puts such programs in violation of Section 225."<sup>234</sup> The item explained that the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose

<sup>228</sup> See Verizon Comments at 14; Verizon Reply Comments at 10; Sorenson Comments at 62-65 (but supporting making data available in an aggregated form that would protect commercially sensitive information).

<sup>229</sup> Hands On Reply Comments at 6.

<sup>230</sup> See 47 C.F.R. § 64.604(c)(iii)(5)(I) (addressing confidential treatment of providers' cost and demand data). We recognize that there is some tension between the notion that because VRS (and other forms of TRS) are presently entirely compensated from the Fund, the providers' financial data should be public, and the notion that because this has become a competitive business, by for-profit entrepreneurial companies, such companies should be entitled to keep their financial data confidential.

<sup>231</sup> See *supra* note 109.

<sup>232</sup> *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, CG Docket No. 03-123, Declaratory Ruling, 20 FCC Rcd 1466 (Jan. 26, 2005) (2005 *Financial Incentives Declaratory Ruling*).

<sup>233</sup> 2005 *Financial Incentives Declaratory Ruling*, 20 FCC Rcd at 1466, para 1.

<sup>234</sup> *Id.*, 20 FCC Rcd at 1469, para. 8.



to make them, and that "[b]ecause the Fund, and not the consumer, pays for the cost of the TRS call, such financial incentives are tantamount to enticing consumers to make calls that they might not ordinarily make."<sup>235</sup> The item concluded that, effective March 1, 2005, "any TRS provider offering such incentives for the use of any of the forms of TRS will be ineligible for compensation from the Interstate TRS Fund."<sup>236</sup>

91. Also in January 2005, CGB released a Public Notice addressing impermissible VRS marketing practices.<sup>237</sup> This item stated, among other things, that "[t]he TRS rules do not require a consumer to choose or use only one VRS (or TRS) provider," and that a "consumer may use one of several VRS providers available on the Internet or through VRS service hardware that attaches to a television."<sup>238</sup> In addition, it noted that apparently "some providers use their customer database to contact prior users of their service and suggest, urge, or tell them to make more VRS calls."<sup>239</sup> The item concluded that:

[t]his marketing practice constitutes an improper use of information obtained from consumers using the service, is inconsistent with the notion of functional equivalency, and may constitute a fraud on the Interstate TRS Fund because the Fund, and not the consumer, pays for the cost of the VRS call. As we have noted, the purpose of TRS is to allow persons with certain disabilities to use the telephone system. Entities electing to offer VRS (or other forms of TRS) should not be contacting users of their service and asking or telling them to make TRS calls. Rather, the provider must be available to handle the calls that consumers choose to make. For this reason as well, VRS providers may not require consumers to make TRS calls, impose on consumers minimum usage requirements, or offer any type of financial incentive for consumers to place TRS calls.<sup>240</sup>

<sup>235</sup> *Id.* The item added that in these circumstances, "TRS is no longer simply ... [a means] for persons with certain disabilities [to access the telephone system], but an opportunity for their financial gain." *Id.*

<sup>236</sup> *Id.*, 20 FCC Rcd at 1469-70, para. 9; see also *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Order, 20 FCC Rcd 12503 (July 28, 2005) (concluding that offering free or discount long distance service to TRS consumers constitutes an impermissible financial incentive, and that programs "directed at giving the consumer an incentive to make a TRS call in the first place ... are prohibited").

<sup>237</sup> *Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not be Used as a Video Remote Interpreting Service*, CC Docket No. 98-67, CG Docket No. 03-123, Public Notice, 20 FCC Rcd 1471 (Jan. 26, 2005) (*2005 TRS Marketing Practices PN*).

<sup>238</sup> *Id.*, 20 FCC Rcd at 1473. Further, in the *VRS Interoperability Declaratory Ruling and FNPRM*, the Commission concluded that "consistent with functional equivalency, all VRS consumers must be able to place a VRS call through any of the VRS providers' service, and all VRS providers must be able to receive calls from, and make calls to, any VRS consumer. Therefore, a provider may not block calls so that VRS equipment cannot be used with other providers' service. In addition, a provider may not take other steps that restrict a consumer's unfettered access to other providers' service. This includes the practice of providing degraded service quality to consumers using VRS equipment or service with another provider's service." *VRS Interoperability Declaratory Ruling and FNPRM*, 21 FCC Rcd at 5456, para. 34.

<sup>239</sup> *2005 TRS Marketing Practices PN*, 20 FCC Rcd at 1473.

<sup>240</sup> *Id.* (internal footnotes omitted). The item also "question[ed] whether there are any circumstances in which it is appropriate for a TRS provider to contact or call a prior user of their service," given that "the role of the provider is to make available a service to consumers ... under the ADA when a consumer may choose to use that service." *Id.*

92. Notwithstanding the 2005 Financial Incentives Declaratory Ruling and the 2005 TRS Marketing Practices PN, we continue to discover that TRS providers – particularly VRS and IP Relay providers – offer financial and other incentives for consumers to use their service to make relay calls.<sup>241</sup> We therefore reaffirm the 2005 Financial Incentives Declaratory Ruling and the 2005 TRS Marketing Practices PN, and reiterate that providers seeking compensation from the Fund may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls. Such incentives include sweepstake giveaways (e.g., the relay user earns chances to win a prize with each call made), sponsorships tied to service usage, charitable contributions by a provider based on calls made,<sup>242</sup> charitable contributions or other gifts or payments by a provider based on failure to meet specific performance standards (e.g., if a call is not answered within a specific period of time, a contribution will be made to a third party organization), and offering financial incentives or rewards to register with the provider, add the provider to the consumer's speed dial list, or to become a provider's "VIP" customer.

93. We emphasize that a financial incentive program is not permissible even in circumstances where the benefit goes to a third party, rather than the consumer making the call, or the program is tied to the consumer giving the provider feedback about the quality of the call. Even when the benefit goes to a third party, the program has the intent and the effect of rewarding consumers for making relay calls, as well as giving consumers an incentive to make relay calls that they might not otherwise make. Likewise, tying a reward to making calls *and* responding with feedback about the call does not change the fact that consumers are given an incentive to make calls they might not otherwise make. Providers seeking feedback on the quality of their service can readily do so without offering call incentives.

94. Further, impermissible marketing and incentive practices include calling a consumer and requiring, requesting, or suggesting that the consumer make VRS calls.<sup>243</sup> This rule also applies in the context of providers that choose to give VRS (or TRS) equipment to consumers. Providers that give consumers relay equipment cannot condition the ongoing *use or possession* of the equipment, or the receipt of different or upgraded equipment, on the consumer making relay calls through its service or the service of any other provider. In other words, providers cannot give consumers equipment as part of outreach efforts or for other purposes, and then require that the equipment be relinquished if the consumer fails to maintain a certain call volume. Not only do such practices likely require the impermissible use of the providers' call database, and the impermissible monitoring of consumers' calls, they also constitute impermissible financial incentives. In these circumstances, the consumers' ongoing receipt of a financial benefit – free equipment – is conditioned on the use of the equipment to make relay calls, calls that the Fund, and not the consumer, pays for. Therefore, the consumer may be placed in the position of having to return the equipment, or foregoing receiving upgraded equipment, because the consumer has not made a sufficient number of relay calls.<sup>244</sup>

<sup>241</sup> These programs are generally set forth on the providers' websites.

<sup>242</sup> For example, a promotion where a provider will make a donation to a specific deaf organization each time a consumer makes a call through its service. Such a promotion also suggests that the provider is being overcompensated, since the provider is willing to give away some of the money it earns with each call.

<sup>243</sup> 2005 TRS Marketing Practices PN at 3. We continue to receive anecdotal evidence of VRS providers calling VRS consumers and noting, e.g., that the consumer has not made many calls and urging the consumer to make more calls.

<sup>244</sup> We recognize that the effect of this rule, coupled with the interoperability rule, is that if a provider chooses to give consumers equipment, once the equipment is given the provider does not have control over the extent to which it is used to make relay calls, or even if it is used at all. Again, this conclusion is compelled by the very nature of TRS and the role of relay providers offering the "dial tone" for consumers to make "telephone" calls if and when they choose to make them. Moreover, consumer handsets, and certainly personal computer-like devices, have never been included as part of TRS support funded pursuant to Section 225. Of course, providers might require the return of their equipment if they decide to no longer offer relay service (or to no longer seek compensation for it from the

(continued...)

95. Finally, apart from attempting to generate additional calls that can be billed to the Fund, providers also may not use a consumer or call database to contact TRS users for lobbying or any other purpose. The Commission has made clear not only in the *2005 TRS Marketing Practices PN*, but also in the *2000 TRS Order*, that TRS customer profile information cannot be used for any purpose other than handling relay calls.<sup>245</sup> Therefore, for example, a provider may not contact its customers, by an automated message, postcards, or otherwise, to inform them about pending TRS compensation issues and urge them to contact the Commission about the compensation rates. Similarly, as noted above, a provider may not use call data to monitor the TRS use by its customers (or the customers of other providers) and to determine whether they are making a sufficient number of calls to warrant further benefits from the provider.

96. In sum, because the obligation placed on TRS providers is to be available to handle calls consumers choose to make, when they choose to make them, i.e., to be the "dial tone" for a consumer that uses relay to call to a voice telephone user, and because consumers do not pay for this service but rather providers are compensated pursuant to Title IV of the ADA, providers may not offer relay users financial and similar incentives, directly or indirectly, to use their service. Likewise, they may not use consumer or call data to contact TRS users or to in any way attempt to affect or influence, directly or indirectly, their use of relay service. Because, as suggested above, we recognize that incentive programs can be structured in limitless ways, we will continue to carefully monitor the provision of service and equipment in this regard. Providers offering such programs or otherwise taking action that has the effect of providing consumers incentives to make relay calls, or misusing customer information, will be ineligible for compensation from the Fund.<sup>246</sup> Further, such providers may also be subject to other actions for violations of our rules.

## V. CONCLUSION

97. In this *Order*, we adopt new cost recovery methodologies for the various forms of TRS. First, for interstate traditional TRS, interstate STS, interstate CTS, and interstate and intrastate IP CTS we adopt a cost recovery methodology based on the MARS plan, which averages state intrastate compensation rates. Second, for IP Relay we adopt a cost recovery methodology based on price caps. Finally, with respect to VRS, we adopt a cost recovery methodology based on tiered rates corresponding to monthly minutes of use. The VRS and IP Relay rates shall be set for three years, subject to certain annual adjustments. We also adopt new compensation rates for the various forms of TRS pursuant to the new cost recovery methodologies. The Commission is taking these actions to ensure that providers of these services receive compensation that more accurately reflects their reasonable actual costs. Finally, the Declaratory Ruling clarifies that TRS providers seeking compensation from the Fund may not offer consumers financial or other tangible incentives, either directly or indirectly, to make relay calls.

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(...continued from previous page)

Fund), seek the return of all equipment given to consumers, or seek the return of the equipment for reasons not related to number or nature of relay calls made.

<sup>245</sup> *2000 TRS Order*, 15 FCC Rcd at 5175, para. 83.

<sup>246</sup> Section 225 defines TRS as "telephone transmission services" provided to an individual who has a hearing or speech disability "in a manner that is functionally equivalent" to those services offered to persons without such disabilities. 47 U.S.C. § 225(a)(3). Because we have determined that financial incentive programs violate the functional equivalency requirement, providers engaging in these programs are no longer providing TRS within the meaning of the statute. Therefore, because it would be technically impossible to separate a providers' legitimate relay calls from those made merely as the result of an impermissible incentive, we conclude that providers offering such programs will be ineligible for any compensation from the Fund.

**VI. PROCEDURAL MATTERS****A. Final Regulatory Flexibility Analysis**

98. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>247</sup> the Commission as prepared a Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact on small entities of the policies and rules addressed in this item. The FRFA is set forth in Appendix G.

**B. Paperwork Reduction Act Analysis**

99. This document contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

100. In addition, we note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198,<sup>248</sup> we previously sought specific comment on how we might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

101. In this present document, we have assessed the effects of imposing the provision of rate data on the states and the providers of interstate traditional TRS, interstate STS, and interstate captioned telephone service, and find that there is no increased administrative burden on businesses with fewer than 25 employees. We recognize that the required rate data is presently available with the states and the providers of interstate traditional TRS, interstate STS, and interstate captioned telephone service, thereby no additional step is required to produce such data. We therefore believe that the provision of the rate data does not increase an administrative burden on businesses.

**C. Congressional Review Act**

102. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>249</sup>

**D. Materials in Accessible Formats**

103. To request materials in accessible formats (such as Braille, large print, electronic files, or audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice) or (202) 418-0432 (TTY). This *Report and Order* can also be downloaded in Word and Portable Document Formats (PDF) at <http://www.fcc.gov/cgb.dro>.

**VII. ORDERING CLAUSES**

104. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, and 225, this *Order* IS ADOPTED.

<sup>247</sup> The RFA, see § 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

<sup>248</sup> See 44 U.S.C. § 3506(c)(4).

<sup>249</sup> See 5 U.S.C. § 801(a)(1)(A).

105. IT IS FURTHER ORDERED that an annual compensation rate shall apply to interstate traditional TRS and interstate STS based on the MARS plan and the intrastate traditional TRS and STS rate(s) paid by the states, as provided herein.

106. IT IS FURTHER ORDERED that an annual compensation rate shall apply to interstate CTS and interstate and intrastate IP CTS based on the MARS plan and the intrastate CTS rate paid by the states, as provided herein.

107. IT IS FURTHER ORDERED that a compensation rate shall apply to interstate and intrastate IP Relay based on price caps, and that the rate shall be set for three-year periods, subject to adjustment, beginning with the 2007-2008 Fund year, as provided herein.

108. IT IS FURTHER ORDERED that tiered compensation rates shall apply to interstate and intrastate VRS based on minutes of use, and that the rates shall be set for three-year periods, subject to adjustment, beginning with the 2007-2008 Fund year, as provided herein.

109. IT IS FURTHER ORDERED that, effective on the first day of the month following the effective date of this *Order*, the following per-minute compensation rates shall apply, as provided herein: for interstate traditional TRS: \$1.592; for interstate STS: \$2.723; for interstate CTS and interstate and intrastate IP CTS: \$1.629; for interstate and intrastate IP Relay: \$1.293; and for interstate and intrastate VRS: (1) for the first 50,000 monthly minutes: \$6.77; (2) for monthly minutes between 50,001 and 500,000: \$6.50; and (3) for monthly minutes above 500,000: \$6.30.

110. IT IS FURTHER ORDERED that the amendment to section 64.604 of the Commission's rules, as set forth in Appendix H, IS ADOPTED, effective upon approval by OMB approval of such requirements. The Commission will publish a document in the Federal Register announcing the effective date of the amended rule.

111. IT IS FURTHER ORDERED that this *Order* SHALL BE EFFECTIVE 30 days after publication in the Federal Register, except information collection requirements subject to the Paperwork Reduction Act SHALL BECOME EFFECTIVE upon OMB approval of such requirements. The Commission will publish a document in the Federal Register announcing the effective date of these requirements.

112. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Order*, including the Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

**APPENDIX A****List of Commenters****Comments:**

Bob Segalman

Communication Access Center for the Deaf and Hard of Hearing, Communication Service for the Deaf, Inc., GoAmerica, Inc., Hands On Video Relay Services, Inc., Snap Telecommunications, Inc., Sorenson Communications, Inc., and Sprint Nextel Corporation (Joint Providers)

Hamilton Relay, Inc.

Hands On Video Relay Services, Inc.

Florida Public Service Commission

Sorenson Communications, Inc.

Sprint Nextel Corporation

Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late-Deafened Adults, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, California Coalition of Agencies Serving the Deaf and Hard of Hearing, and Hearing Loss Association of America (Joint Consumers)

Verizon

**Individual Comments:**

Individual comments can be found in CG Docket No. 03-123 at: [http://fccweb01w/prod/ecfs/s\\_a/](http://fccweb01w/prod/ecfs/s_a/).  
Individual comments were filed through identical postcards on July 20, 2006.

**Reply Comments:**

AT&T Inc.

Communication Service for the Deaf, Inc.

Hands On Video Relay Services, Inc.

Hamilton Relay, Inc.

Sorenson Communications, Inc.

Telecommunications for the Deaf and Hard of Hearing, Inc., Association of Late-Deafened Adults, Inc., National Association of the Deaf, Deaf and Hard of Hearing Consumer Advocacy Network, California Association of Agencies Serving the Deaf and Hard of Hearing, and Hearing Loss Association of America (Joint Consumers)

Ultratec, Inc.

Verizon

## APPENDIX B

**Collection of State Data from Certified State Programs and Providers**  
**Traditional TRS and STS Data**

For the particular calendar year as indicated in the request for data, states and traditional TRS providers shall provide the information set forth below (data below provided as an example). The total *session* and *conversation* minutes should include the total intrastate minutes for traditional TRS (including Spanish traditional TRS) and STS. If STS is compensated at a different rate, so indicate and include the session and conversation minutes for STS separately, as indicated below.

If the state rate does *not* include other costs paid to the provider in connection with the provision of intrastate traditional TRS, the state and/or provider shall so indicate and set forth the total amount of such additional costs paid during the calendar year and the nature of the cost, as indicated below.

**SAMPLE ANALYSIS**

<u>State</u>	<u>Per-Minute Compensation Rate</u>	<u>Based on Session (SM) or Conversation Minutes (CM)</u>	<u>Total Intrastate Conversation Minutes</u>	<u>Total Intrastate Session Minutes</u>
["W"]	\$1.20	CM	300,000	420,000
["X"]	\$0.90	SM	500,000	700,000
["Y"]	\$1.15 (trad. TRS)	CM	400,000	540,000
	\$1.25 (STS)	CM	25,000	35,000
["Z"]	\$1.10	CM	800,000	1,100,000
	[\$100,000 additional costs not included in the rate for the calendar year for traditional TRS and STS – explain nature of costs]			

## Notes:

1. If a particular state does not maintain conversation minutes (e.g., because it compensates the provider on the basis of session minutes), the state shall so indicate.
2. States and providers should indicate the extent to which the submitted information should be considered confidential.
3. States and providers of captioned telephone service shall separately submit this data for intrastate captioned telephone service, as set forth in the *Order*.



## APPENDIX C

## Calculating Total Dollars for All States for MARS Calculation

Using the data collected pursuant to Appendix B from the states and the providers, the Fund administrator or Commission will multiply each state's traditional TRS rate by the number of *either* intrastate *session* minutes or intrastate *conversation* minutes, whichever the state rate is based upon (as indicated in bold below). The total amount for each state will then be totaled, including other costs not reflected in the rate. This number becomes the numerator in the final calculation that determines the rate.

SAMPLE ANALYSIS

<u>State</u>	<u>Per-Minute Compensation Rate</u>	<u>SM or CM</u>	<u>Total Intrastate CM</u>	<u>Total Intrastate SM</u>	<u>Total Dollars</u>
["W"]	<b>\$1.20</b>	CM	<b>300,000</b>	420,000	\$360,000
["X"]	<b>\$0.90</b>	SM	500,000	<b>700,000</b>	\$630,000
["Y"]	<b>\$1.15</b> (trad. TRS)	CM	<b>400,000</b>	540,000	\$460,000
	<b>\$1.25</b> (STS)	CM	<b>25,000</b>	35,000	\$31,250
["Z"]	<b>\$1.10</b>	CM	<b>800,000</b>	1,100,000	\$880,000
	Other costs not reflected in rate:				<u>\$100,000</u>
					\$2,461,250

## Notes:

1. List includes all states for which data will be included in rate calculation.
2. A separate calculation will be made for captioned telephone service.

## APPENDIX D

## Final MARS Rate Calculation

To determine the final MARS rate to be applied to interstate conversation minutes, the total dollar amount for all the states (total of last column of Appendix B) is divided by the total intrastate *conversation* minutes for all the states (even if some states do not base their rate on conversation minutes).

SAMPLE ANALYSIS

<u>State</u>	<u>Total Intrastate CM</u>	<u>Total Dollars (from Appendix B)</u>
["W"]	300,000	\$360,000
["X"]	500,000	\$630,000
["Y"]	400,000	\$460,000
	25,000	\$31,250
["Z"]	<u>800,000</u>	\$880,000
		<u>\$100,000</u>
	2,025,000	\$2,461,250

Final Rate Calculation:      \$2,461,250 divided by 2,025,000 = \$1.215

## Notes:

1. List includes all states whose data is going to be included in the calculation.
2. A separate calculation will be made for captioned telephone service.

## APPENDIX E

## TRS and STS Intrastate Rate Data for 2006

	Per Minute Rate	Conversation or Session Minutes
State X	\$ 0.270	Session
State X	\$ 0.730	Session
State X	\$ 0.740	Session
State X	\$ 0.740	Session
State X	\$ 0.750	Session
State X	\$ 0.750	Session
State X	\$ 0.760	Session
State X	\$ 0.800	Session
State X	\$ 0.820	Session
State X	\$ 0.850	Session
State X	\$ 0.850	Session
State X	\$ 0.860	Session
State X	\$ 0.875	Session
State X	\$ 0.890	Session
State X	\$ 0.890	Session
State X	\$ 0.890	Session
State X	\$ 0.895	Session
State X	\$ 0.900	Session
State X	\$ 0.915	Session
State X	\$ 0.918	Session
State X	\$ 0.930	Session
State X	\$ 0.930	Session
State X	\$ 0.940	Session
State X	\$ 0.940	Session
State X	\$ 0.960	Session
State X	\$ 1.040	Session
State X	\$ 1.070	Session
State X	\$ 1.085	Session
State X	\$ 1.130	Session
State X	\$ 1.241	Session
State X	\$ 1.340	Session
State X	\$ 1.450	Session
State X	\$ 1.900	Session
State X	\$ 2.250	Session

State X	\$	2.500	Session
State X	\$	1.060	Conversation
State X	\$	1.090	Conversation
State X	\$	1.100	Conversation
State X	\$	1.170	Conversation
State X	\$	1.210	Conversation
State X	\$	1.240	Conversation
State X	\$	1.240	Conversation
State X	\$	1.260	Conversation
State X	\$	1.295	Conversation
State X	\$	1.310	Conversation
State X	\$	1.350	Conversation
State X	\$	1.390	Conversation
State X	\$	1.400	Conversation
State X	\$	1.406	Conversation
State X	\$	1.420	Conversation
State X	\$	1.720	Conversation
State X	\$	1.890	Conversation

\* There are 52 entities listed, because one state changed providers and therefore rates, mid-year, and Puerto Rico is included.

## APPENDIX F

Captioned Telephone Service Intrastate Rate Data for 2006

	Per-Minute Rate	Conversation or Session Minutes
State X	\$ 1.320	Session
State X	\$ 1.320	Session
State X	\$ 1.350	Session
State X	\$ 1.370	Session
State X	\$ 1.400	Session
State X	\$ 1.400	Session
State X	\$ 1.400	Session
State X	\$ 1.400	Session
State X	\$ 1.400	Session
State X	\$ 1.400	Session
State X	\$ 1.430	Session
State X	\$ 1.440	Session
State X	\$ 1.440	Session
State X	\$ 1.450	Session
State X	\$ 1.450	Session
State X	\$ 1.450	Session
State X	\$ 1.450	Session
State X	\$ 1.450	Session
State X	\$ 1.450	Session
State X	\$ 1.450	Session
State X	\$ 1.520	Session
State X	\$ 1.650	Session
State X	\$ 1.700	Session
State X	\$ 1.820	Session
State X	\$ 1.900	Session
State X	\$ 1.290	Conversation
State X	\$ 1.390	Conversation
State X	\$ 1.400	Conversation
State X	\$ 1.400	Conversation
State X	\$ 1.430	Conversation
State X	\$ 1.450	Conversation
State X	\$ 1.450	Conversation
State X	\$ 1.450	Conversation
State X	\$ 1.450	Conversation

State X	\$	1.500	Conversation
State X	\$	1.500	Conversation
State X	\$	1.560	Conversation
State X	\$	1.610	Conversation
State X	\$	1.640	Conversation
State X	\$	1.650	Conversation

## APPENDIX G

## Final Regulatory Flexibility Certification

113. The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>250</sup> requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>251</sup> The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>252</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>253</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>254</sup>

114. This *Report and Order* addresses issues related to cost recovery methodologies for various forms of TRS. This *Report and Order* adopts a single cost recovery methodology based on the "MARS" plan for interstate traditional TRS, interstate STS, interstate captioned telephone service and interstate and intrastate IP captioned telephone service (IP CTS).<sup>255</sup> Beginning with the 2007-2008 Fund year, a single MARS rate will be calculated and will apply to interstate traditional TRS and interstate STS, interstate captioned telephone service, and IP CTS. Because states generally negotiate and pay separate rates for captioned telephone service, a separate MARS rate will be calculated and will apply to interstate captioned telephone service. As noted below, the MARS plan methodology will not apply to IP Relay, and thus the Commission will adopt a separate cost recovery methodology for that service.<sup>256</sup>

<sup>250</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996, (SBREFA) Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>251</sup> 5 U.S.C. § 605(b).

<sup>252</sup> 5 U.S.C. § 601(6).

<sup>253</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."

<sup>254</sup> Small Business Act, § 15 U.S.C. § 632.

<sup>255</sup> Hamilton Relay, Inc (Hamilton) raised this proposal, which would base the compensation rate paid by the Fund on the average of the *intrastate* TRS rates paid by the states, in its petition for reconsideration of the 2004 TRS *Report & Order*. Hamilton Relay Service, Inc., Petition for Reconsideration (filed Oct. 1, 2004) (Hamilton Petition); see also Hamilton Reply to comments filed in response to its petition for reconsideration (filed Nov. 30, 2004). Hamilton also raised this issue in its application for review of the 2004 *Bureau TRS Rate Order*, which adopted the compensation rates for the various forms of TRS for the 2004-2005 Fund year. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 12224 (June 30, 2004) (2004 *Bureau TRS Rate Order*), modified by *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 24981 (Dec. 30, 2004) (*Modified 2004 Bureau TRS Order*).

<sup>256</sup> See *supra* paras. 39-46.



115. The Commission concludes that the MARS methodology,<sup>257</sup> as proposed, cannot be applied to IP Relay because there are no state rates for these services. The Commission, therefore, continues to use a cost recovery methodology for IP Relay based on the providers' projected demand and cost data that reasonably compensates the providers for the provision of IP Relay service. The Commission also concludes that adopting the proposed price cap plan for IP Relay that will encourage IP Relay providers to become more efficient in providing the service. The Commission believes that the price cap plan for IP Relay will not have a significant economic impact on a substantial number of small businesses.

116. The Commission concludes that adoption of the MARS plan for Interstate Traditional TRS, Interstate STS, Interstate CTS, and IP CTS for setting the rate eliminates the need to file the much more voluminous cost and demand data that providers presently must submit under the current cost recovery methodology to the Fund administrator. The Commission, therefore, concludes that the effect of the adoption of the MARS plan would be to lessen the reporting burden on small businesses. Accordingly, the Commission does not believe that these actions will have a significant economic impact on a substantial number of small businesses.

117. The Commission further believes that the decision to set a standard for how "reasonable" costs should be compensable under the present cost recovery methodology for all forms of TRS, as well as a standard for what "reasonable" costs should include, will provide guidance for the providers, and therefore, benefits small businesses in two ways. This includes setting a standard for whether, and to what extent, marketing and outreach expenses, overhead costs, and executive compensation are compensable from the Fund. First, it provides predictability, and secondly, it eliminates uncertainties with whether the costs submitted would be compensable or not. Eliminating uncertainties will lessen the reporting burden on small businesses. The Commission therefore concludes that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

118. The Commission expressed concern, based on comparisons of VRS providers' cost and demand projections with their actual historical data, that some VRS providers have received compensation significantly in excess of their actual costs.<sup>258</sup> The Commission has also observed that providers' demand forecasts for VRS generally have been lower than actual demand, resulting in overcompensation to providers for completed minutes under the current per-minute cost recovery scheme.<sup>259</sup>

119. The Commission, therefore, adopts three compensation rate tiers for VRS. These tiers are intended to reflect likely cost differentials between small providers; mid-level providers who are established but who do not hold a dominant market share; and large, dominant providers who are in the

<sup>257</sup> Hamilton Relay, Inc. (Hamilton) raised this proposal, which would base the compensation rate paid by the Fund on the average of the *intrastate* TRS rates paid by the states, in its petition for reconsideration of the 2004 TRS *Report & Order*. Hamilton Relay Service, Inc., Petition for Reconsideration (filed Oct. 1, 2004) (Hamilton Petition); see also Hamilton Reply to comments filed in response to its petition for reconsideration (filed Nov. 30, 2004). Hamilton also raised this issue in its application for review of the 2004 Bureau TRS Rate Order, which adopted the compensation rates for the various forms of TRS for the 2004-2005 Fund year. See *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 12224 (June 30, 2004) (2004 Bureau TRS Rate Order), modified by *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Order, 19 FCC Rcd 24981 (Dec. 30, 2004) (Modified 2004 Bureau TRS Order).

<sup>258</sup> See *supra* para. 48.

<sup>259</sup> *Id.*

best position to achieve cost synergies. As a general matter, the three-tiered approach is based on market data reflecting the number of monthly minutes submitted to NECA by the various providers. The data reflects that the newer providers generally provide less than 100,000 minutes per month; that other, more established providers (with the exception of the dominant provider) generally provide monthly minutes *ranging in the low hundreds of thousands*; and that the dominant provider provides minutes ranging in the millions. The Commission, therefore, believes that using three tiers is appropriate to ensure both that, in furtherance of promoting competition, the newer providers will cover their costs, and the larger and more established providers are not overcompensated due to economies of scale.

120. By adopting a tiered approach, as set forth above, providers that handle a relatively small number of minutes and therefore have relatively higher per-minute costs will receive compensation on a monthly basis that will likely more accurately correlate to their actual costs. Conversely, providers that handle a larger number of minutes, and that therefore have lower per-minute costs, will also receive compensation on a monthly basis that likely more accurately correlates to their actual costs. Furthermore, the Commission concludes that under such a tiered approach, all providers will be compensated on a "cascading" basis, such that providers will be compensated at the same rate for the minutes falling within a specific tier. In other words, all providers will be compensated at the highest rate for those minutes falling within the first tier; at the middle rate for those minutes falling within the middle tier, and at the lower rate for all additional minutes. The Commission believes that using tiered rates, rather than a single, weighted average rate, will more fairly compensate all providers for their reasonable actual costs of providing service. Since fair compensation will benefit all providers equally, imposing no separate and adverse impact on smaller entities, the Commission further concludes that its tiered rates will not have a significant economic impact on a substantial number of small entities.

121. Because the Commission recognizes that potential STS users are not being made aware of the availability of STS, the Commission adds an additional amount to the STS compensation rate for outreach efforts. The Commission also requires that STS providers file a report annually with NECA and the Commission on their specific outreach efforts directly attributable to the additional support for STS outreach. Since STS providers will be compensated an additional amount for outreach, the Commission concludes that requiring STS providers to file an annual report will not have a significant economic impact on a substantial number of small entities.

122. Finally, in order to be compensated for the costs of providing TRS, the providers are required to meet the applicable TRS mandatory minimum standards as required in Section 64.604.<sup>260</sup> Reasonable costs of compliance with this *Report and Order* are compensable from the Fund. Thus, because the providers will recoup the costs of compliance within a reasonable period, the Commission asserts that the providers will not be detrimentally burdened. Therefore, the Commission certifies that the requirements of the *Report and Order* will not have a significant economic impact on a substantial number of small entities.

123. The Commission also notes that, with specific regard to the issue of whether a substantial number of small entities will be affected, of the 13 providers affected by the ruling adopted herein, there are only three small entities that will be affected by our action. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees.<sup>261</sup> Currently, thirteen providers are providing various forms of TRS and being

<sup>260</sup> See generally 47 C.F.R. § 64.604(c)(5)(iii)(E).

<sup>261</sup> 13 C.F.R. § 121.201, NAICS code 517110. According to Census Bureau data for 1997, there were 2,225 firms in this category which operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 5, NAICS code 513310 (issued Oct. 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be

(continued...)

compensated from the Interstate TRS Fund: Ameritech; AT&T Corp.; CapTel, Inc.; Communication Access Center for the Deaf and Hard of Hearing, Inc.; GoAmerica; Hamilton Relay, Inc.; Hands On; Healinc; Nordia Inc.; Snap Telecommunications, Inc; Sorenson; Sprint and Verizon. The Commission notes that 3 of 13 providers noted above are small entities under the SBA's small business size standard. Because three of the affected providers will be promptly compensated within a reasonable period for complying with this *Report and Order*, the Commission concludes that the number of small entities affected by our decision in this *Order* is not substantial.

124. Therefore, for all of the reasons stated above, the Commission certifies that the requirements of this *Report and Order* will not have a significant economic impact on these small entities.

125. The Commission will send a copy of the *Report and Order*, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>262</sup> In addition, the *Report and Order* and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>263</sup>

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considered small. (The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more.")

<sup>262</sup> See 5 U.S.C. § 801(a)(1)(A).

<sup>263</sup> See 5 U.S.C. § 605(b).

## APPENDIX H

## Final Rule Changes

The Commission amends 47 C.F.R. Part 64 subpart F as follows:

## PART 64 – MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2)(B), (c), Public Law 104-104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

2. Section 64.604 is amended by amending paragraph (c)(5)(iii)(C) to read as follows:

**§ 64.604 Mandatory minimum standards.**

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(c)

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(5)

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(iii)

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(C) *Data Collection from TRS Providers.* TRS Providers shall provide the administrator with true and adequate data and other historical, projected and state rate related information reasonably requested by the administrator necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

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**STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123.*

A cornerstone of the Americans with Disabilities Act is to ensure that persons with disabilities can access the tools they need to lead prosperous, productive and fulfilling lives. With this as a guiding principle, it continues to be essential that the Commission ensure that the deaf, hard of hearing and those with speech disabilities receive the communications services they are entitled to, that providers are fairly compensated for their services, and that the Commission be able to effectively administer the program.

In July of last year we sought comment from consumers and providers on how best to build a rate reimbursement system that serves consumers well and fairly compensates providers. At the time I said we must not find ourselves unable to meet the challenge upon the completion of the rulemaking. I am pleased to say that after essential input from members of the disabilities community and service providers, along with the hard work of Commission staff, we are hopefully putting the Telecommunications Relay Services rate reimbursement system on a solid footing for the future to best serve the deaf, hard of hearing and speech impaired consumers.

In particular, the Commission adopts new rate recovery methodologies for the variety of services available to the disabilities community. The adoption of the Multi-state Average Rate Structure Plan for a number of services is expected to simplify the rate process while setting more predictable, fair, and reasonable rates. For Video Relay Services, the Commission adopts tiered compensation rates based on call volume. In doing so the Commission encourages competition for services while recognizing that there are efficiencies when larger providers have achieved economies of scale. In the case of Speech-to-Speech services, I am particularly pleased that the Commission directs additional funding be used for outreach to this underserved community. Further, the Commission remains committed to doing ongoing audits and oversight and therefore requires providers to submit detailed information to allow for ongoing reviews of the integrity of these reimbursement programs.

The benefits of the new reimbursement system are certainly promising but the Commission will need to monitor it closely to ensure that it is working as intended. It remains essential that going forward all of the stakeholders affected by these new rules, particularly members of the disabilities community, provide us with their input on where it is working well and where any adjustments are needed. We stand ready to address any unforeseen consequences as these rules are implemented.

I want to thank Chairman Martin for his willingness to work closely with us to reach such a favorable outcome. My thanks also go out to the Bureau, particularly Cathy Seidel and the Disability Rights Office, for working tirelessly not only on this item but also on the Commission's obligations to the disabilities community.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03-123.*

The services supported by the Telecommunications Relay Service (TRS) Fund provide vital connections for millions of Americans with hearing and speech disabilities. As communications technologies continue to play a greater role in all of our lives, relay services are an increasingly important tool. They help the disability community harness the power of our rapidly-evolving communications networks and, more broadly, they help us as a nation to take advantage of our collective strength.

Even as use of revolutionary technologies like Video Relay Service (VRS), Internet Protocol (IP) Relay, and IP Captioned Telephone Service has surged, the Commission's compensation rate-setting process for our relay services has presented a variety of open questions and controversy among providers and consumers. The message was clear from providers and consumers alike that the Commission needed to improve its administration of the Fund and to increase awareness of these critical services, so I am pleased that we tackle these issues in earnest here.

I commend the Chairman, my colleagues, and the Consumer and Governmental Affairs Bureau for their collective efforts to improve our management of the fund through this Order. The changes adopted here are supported by both consumers and providers, and should provide a more reasonable, transparent, and predictable process in future years. I am also pleased that we provide specific compensation for outreach regarding emerging services, like Speech-to-Speech relay services, in this Order. Finally, I am also pleased that we affirm our commitment to the TRS Advisory Council, and that we enlist the Council's assistance in monitoring and reviewing the new methodologies implemented here.

We must always be mindful of the Americans with Disabilities Act's (ADA) requirement that telecommunications services for those with hearing and speech disabilities be "functionally equivalent" to those services provided to hearing individuals, which serves as a continuing challenge for us to improve the program. I look forward to working with my colleagues, our CGB staff, members of the TRS Advisory Council, and the many members of the disabilities community on these issues as we move forward.